

July 14, 2008

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Elizabeth Borum

Date of Filing: July 1, 2008

Case Number: TFA-0265

This Decision concerns an Appeal that Elizabeth Borum filed in response to determinations that were issued to her by the Department of Energy's (DOE) Oak Ridge Operations Office (OR) and by the National Nuclear Security Administration's Albuquerque Service Center (NNSA). In these determinations, OR and NNSA replied to a request for documents that Ms. Borum submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1004.¹ OR released certain documents to Ms. Borum in their entirety, and NNSA stated that it could not locate any documents that are responsive to her request. This Appeal, if granted, would require OR and NNSA to conduct a new search for responsive documents.

In her FOIA request, Ms. Borum sought access to the medical, personnel and radiation exposure records of her deceased father, Roy L. Loudermilk. Mr. Loudermilk was employed at the K-25 plant in Oak Ridge from November 1944 until August 1961. In a partial response dated April 9, 2008, OR provided Ms. Borum with a copy of Mr. Loudermilk's personnel security clearance index card file, a radiation exposure record, and a work history report. In its "final" response, dated May 27, 2008, OR stated that the K-25 search had been completed, and that an additional radiation exposure record had been located. OR provided this record to Ms. Borum in its entirety and informed her that responsive documents might also be located at the Y-12 plant in Oak Ridge. Because the Y-12 plant is under the jurisdiction of NNSA, OR referred Ms. Borum's request to NNSA. In its response to Ms. Borum, NNSA stated that it could not locate any responsive documents.

^{1/} The FOIA generally requires that documents held by federal agencies be released to the public on request. FOIA Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, may be accessed at <http://www.oha.doe/foia1.asp>.

In her Appeal, Ms. Borum challenges the adequacy of the searches performed by OR and NNSA. Subsequent to our receipt of this Appeal, OR provided additional documents to Ms. Borum.² These documents consisted of approximately 140 pages of yearly X-Ray interpretation reports, EKG readings and interpretations, inoculation records, dispensary notes and dates of visits to the K-25 medical department, laboratory (urine and blood) tests, vision and hearing tests, work restrictions, correspondence to the Social Security Administration, physical examination results, a medical incident report, a disability claim for benefits, and "return to work" notes from private physicians. See July 3, 2008 e-mail from Ms. Rothrock to Mr. Palmer.

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. See, e.g., *Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (1995). The FOIA, however, requires that a search be reasonable, not exhaustive. "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); accord, *Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The fact that the results of a search do not meet the requester's expectations does not necessarily mean that the search was inadequate. Instead, in evaluating the adequacy of a search, our inquiry generally focuses on the scope of the search that was performed. *Information Focus On Energy*, 26 DOE ¶ 80,240 (1997).

In order to determine whether the search conducted was adequate, we contacted OR and NNSA. OR informed us that their search extended to the DOE Records Holding area, where Mr. Loudermilk's personnel security clearance assurance index card was found, and to the K-25 plant and Oak Ridge Associated Universities, where his medical records, employment history, and radiation exposure records were found. OR concluded that no other locations were likely to have records pertaining to Mr. Loudermilk. The searches were done both manually and electronically, depending on the nature of the system of records being searched. All electronic searches were performed using as many personal identifiers as possible, e.g., name, badge number, social security number and date of birth. See July 3 e-mail from Ms. Rothrock to Mr. Palmer.

NNSA stated that the DOE Personnel Security Division and the active and archived personnel, medical and radiation records at the Y-12 plant were searched. As was the case with OR, the searches were either manual, or electronic using multiple identifiers, depending on the nature of the system of records being searched. See NNSA's April 15, 2008 determination letter to Ms. Borum; see also memorandum of July 8, 2008 telephone conversation between Christina Hamblen, NNSA, Carolyn Becknell, NNSA, and Mr. Palmer.

^{2/} Employees at the K-25 plant located these documents after OR's May 27 response and sent them to OR during the first week of July 2008. See July 3, 2008 e-mail from Amy Rothrock, OR, to Robert Palmer, OHA Staff Attorney.

Based on this information, we conclude that the DOE's search for responsive documents was reasonably calculated to uncover the sought materials, and was therefore adequate. Ms. Borum's Appeal should therefore be denied.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Elizabeth Borum on July 1, 2008, OHA Case Number TFA-0265, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: July 14, 2008